

FILED  
Clerk  
District Court

FEB 21 2006

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA ) CRIMINAL ACTION NO. 05-0004  
)  
Plaintiff )  
)  
v. )  
) DEFENDANT'S PROPOSED  
FERMINA ATALIG ) JURY INSTRUCTIONS  
)  
Defendant )  
\_\_\_\_\_ )

Defendant Fermina Atalig submits her proposed jury instructions.

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By: G. Anthony Long  
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**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW**

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

**NCJI 3.1**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**THE UNITED STATES AS A PARTY**

You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform your final duty in an attitude of complete fairness and impartiality.

The case is important to the government for the enforcement of criminal laws is a matter of prime concern to the community. Equally, it is important to each defendant who are each charged with serious crimes. The fact that prosecution is brought in the name of the United States of America entitles the prosecution to no greater consideration than that accorded to any other party to a litigation. All parties, whether government or individuals, stand as equals at the bar of justice.

**Matthew & Bender, Modern Federal Jury Instructions ("MFJI") NO. 2-5**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**GOVERNMENT ALWAYS WINS REGARDLESS OF JURY VERDICT**

The question before you can never be: Will the government win or lose the case. The government always wins when justice is done. Justice is achieved when you, the jury return your verdict, regardless of whether the verdict is guilty or not guilty.

derived from MFJI NO. 2-5 Comment.

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**CHARGE AGAINST DEFENDANT NOT  
EVIDENCE — PRESUMPTION OF  
INNOCENCE — BURDEN OF PROOF**

The indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt.

**NCJI 3.2**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**EVIDENCE OF OTHER ACTS OF DEFENDANT OR ACTS AND STATEMENTS OF OTHERS**

You are here only to determine whether the defendant is guilty or not guilty of the charge in the information. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged in the information. You should consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the defendant, only as they relate to this charge against this defendant.

**NCJI 3.10**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**DEFENDANT'S DECISION NOT TO TESTIFY**

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

**NCJI 3.3**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**DEFENDANT'S DECISION TO TESTIFY**

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

**NCJI 3.4**



**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**RULING ON OBJECTIONS**

There are rules of evidence which control what can be received into evidence. When a lawyer asked a question or offered an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer objected. If I overruled the objection, the question was answered or the exhibit received. If I sustain the objection, the question was not answered, and the exhibit was not received. Whenever I sustained an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may have ordered that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence which I told you to disregard.

**NCJI 1.7**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**CONSIDERATION OF EVIDENCE**

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

Some of you have taken notes during the trial. Such notes are only for the personal use of the person who took them.

**NCJI NO. 7.02**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**WHAT IS EVIDENCE**

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which all the lawyers have stipulated.

**NCJI 3.6**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**WHAT IS NOT EVIDENCE**

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, and closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the question, the objection, or the court's ruling on it.
3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.
4. Anything you may have seen or heard when the court was not in session is not

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

evidence. You are to decide the case solely on the evidence received at the trial.

**NCJI 3.7**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

**NCJI 3.8**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**EVIDENCE: SOLELY CIRCUMSTANTIAL**

To justify a conviction based solely on circumstantial evidence, the facts and circumstances must not only be entirely consistent with the theory of guilt, but must be inconsistent with any other rational theory or conclusion.

MCJI 1-O 17(a). *State v. Ryan*, 229 Mont. I, 744 P.2d 1242 (1987); *State v.*

*Miller*, 231 Mont. 497, 757 P.2d 1275, 1284 (1988).

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**CHARTS AND SUMMARIES IN EVIDENCE**

Certain charts and summaries have been received into evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

**NCJI 4.19**



**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**CREDIBILITY OF WITNESSES**

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness' testimony;
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

**NCJI 3.9**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**IMPEACHMENT EVIDENCE- WITNESS**

You have heard evidence that certain witnesses gave or made prior statements which were inconsistent with testimony given during trial. You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe this witness and how much weight to give to the testimony of that witness.

**NCJI NO. 4.08**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**CHARACTER OF WITNESS FOR TRUTHFULNESS**

You have heard evidence of the character for truthfulness of [*name of witness*], a witness. You may consider this evidence along with other evidence in deciding whether or not to believe that witness' testimony and how much weight to give to it.

**NCJI 4.7**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**EYEWITNESS IDENTIFICATION**

In any criminal case, the government must prove beyond a reasonable doubt that the defendant was the perpetrator of the crime alleged.

You have heard testimony of eyewitness identification. In deciding how much weight to give to this testimony, you may take into account the various factors mentioned in these instructions concerning credibility of witnesses.

In addition to those factors, in evaluating eyewitness identification testimony, you may also take into account:

1. the capacity and opportunity of the eyewitness to observe the offender based upon the length of time for observation and the conditions at the time of observation;
2. whether the identification was the product of the eyewitness' own recollection or was the result of subsequent influence or suggestiveness;
3. any inconsistent identifications made by the eyewitness;
4. whether the witness had known or observed the offender at earlier times; and
5. the totality of circumstances surrounding the eyewitness' identification.

NCJI 4.14

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**WITNESS WILLFULLY FALSE**

A witness, who is willfully false in one material part of his or her testimony, is to be distrusted in others. You may reject the whole testimony of a witness who willfully has testified falsely as to a material point, unless, from all the evidence, you believe the probability of truth favors his or her testimony in other particulars.

**CALJIC NO. 2.21.2**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**OPINION TESTIMONY OF LAY WITNESS**

In determining the weight to be given to an opinion expressed by any witness who did not testify as an expert witness, you should consider the person's credibility, the extent of the person's opportunity to perceive the matters upon which his opinion is based and the reasons, if any, given for it. You are not required to accept such an opinion but should give it the weight, if any, to which you find it entitled.

**CALJIC NO. 2.81**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**ACCOMPLICES CALLED BY THE GOVERNMENT**

You have heard witnesses who testified that they were actually involved in planning and carrying out the crime charged in the information. There has been a great deal said about these so-called accomplice witnesses in the summations of counsel and whether or not you should believe them.

The government argues, as it is permitted to do, that it must take the witnesses as it finds them. It argues that only people who themselves take part in criminal activity have the knowledge required to show criminal behavior by others.

For those very reasons, the law allows the use of accomplice testimony. Indeed, it is the law that the testimony of accomplices may be enough in itself for conviction, if the jury finds that the testimony establishes guilt beyond a reasonable doubt.

However, it is also the case that accomplice testimony is of such nature that it must be scrutinized with great care and viewed with particular caution when you decide how much of that testimony to believe.

I have given you some general considerations on credibility and I will not repeat them all here. Nor will I repeat all of the arguments made on both sides. However, let me say a few things that you may want to consider during your deliberations on the subject of accomplices.

You should ask yourselves whether these so-called accomplices would benefit more by lying, or by telling the truth. Was their testimony made up in any way because they believed or hoped that they would somehow receive favorable treatment by testifying falsely? Or did they believe that their interests would be best served by testifying truthfully? If you believe that the

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

witness was motivated by hopes of personal gain, was the motivation one which would cause him to lie, or was it one which would cause him to tell the truth? Did this motivation color his testimony?

In sum, you should look at all of the evidence in deciding what credence and what weight, if any, you will want to give to the accomplice witnesses.

**MFJI NO. 7-5**



**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**TESTIMONY OF ACCOMPLICE**

You have heard testimony from \_\_\_\_\_. An accomplice is one who voluntarily and intentionally joins with another person in committing a crime. You should consider such testimony with greater caution than that of an ordinary witness.

**NCJI NO. 4.11**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**TESTIMONY UNDER GRANT OF IMMUNITY**

You have heard testimony from \_\_\_\_\_ who have each received immunity. That testimony was given in exchange for a promise by the government that their testimony will not be used in any case against them.

In evaluating their testimony, you should consider whether that testimony may have been influenced by the government's promise of immunity given in exchange for it, and you should consider that testimony with greater caution than that of ordinary witnesses.

**NCJI NO. 4.09**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**IMPEACHMENT EVIDENCE - PRIOR CONVICTION**

You have heard evidence that \_\_\_\_\_ have been convicted of \_\_\_\_\_ . You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe those witnesses and how much weight to give to their testimony.

**NCJI NO. 4.08**

**DEFENDANT'S JURY INSTRUCTION NO. \_\_\_\_\_**

**IMPEACHMENT EVIDENCE- WITNESS**

You have heard evidence that certain witnesses gave or made prior statements which were inconsistent with testimony given during trial. You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe this witness and how much weight to give to the testimony of that witness.

**NCJI NO. 4.08**